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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the application of:	)	ART UNIT: 3661
	)	
- Clifford Kraft et Vasilios	)	
Dossas	)	EXAMINER: Y. Beaulieu
	)	
Serial Number: 10/674,151	)	
	)	
Filing Date: Sept 29, 2003	)	
	)	
Title: SYSTEM AND METHOD FOR	)	
PROVIDING REAL-TIME ROAD	)	
CONSTRUCTION INFORMATION)	)	
FOR VEHICLE TRIP	)	
PLANNING SYSTEMS	)	
	)	
	)	

SUBMISSION OF APPEAL BRIEF

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

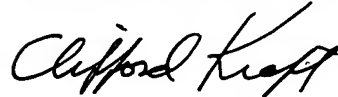
Honorable Commissioner:

Kindly accept the applicant's appeal brief in this case. A timely notice of appeal was filed Jan. 21, 2009. This case is being put back in appeal rather than respond to an examiner's office action taking it out of appeal. Since an appeal brief has already been paid, the applicant only owes the difference caused by an increase in fees since the last brief was filed (\$15). This fee is attached.

Adjustment date: 03/24/2009 CCHAU1  
11/21/2006 EFLORES 00000016 10674151  
01 FC:2402 -250.00 OP

03/24/2009 CCHAU1 00000077 10674151  
01 FC:1999 265.00 OP

Respectfully Submitted



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**BRIEF ON APPEAL**

Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

This is a re-instatement of the previous appeal taken from the final rejection of all claims pending in this application. A notice of appeal to the Board of Patent Appeals and Interferences was timely filed by first class mail on Jan. 21, 2009.

An appeal brief was filed in the previous appeal on Dec. 14, 2007. The examiner removed the case from appeal with a non-final office action on Oct. 24, 2008. The applicant is placing the case back into appeal rather than responding to the examiner's office action. All claims have thus been twice-rejected or finally rejected.

### **I. Real Party of Interest**

The real parties of interest are the inventors Clifford H. Kraft and Vasilios Dossas.

### **II. Related Appeals and Interferences**

There are no other related appeals or interferences.

### **III. Status of the Claims**

Claims 9-23 are being appealed.

Claims 9-23 are pending and have been finally rejected. The status of each claim is as follows:

Claims 1-8 (cancelled).

Claims 9-23 - rejected.

The claims should be considered separately and do not stand or fall together.

### **IV. Status of Amendments**

There have been no amendments after the final rejection.

## **V. Summary of Claimed Subject Matter**

### **A. General Description**

The present invention provides a system that allows vehicle telemetric equipment and other trip planning systems to be updated with the location of the latest road construction. A central information gathering location for gathering road construction information for various vehicle routes can provide this road construction information to on-board telemetrics or trip planning equipment allowing the equipment to display the road construction on a map along with other map data. The road construction information can contain data on the number of lanes affected, construction work times and estimated delay times. The provider of the road construction information can charge a fee for the service. The presence of this information overlaid on a map allows the user to evaluate each route based on the presence of construction and to decide whether to take that route or to detour or take a completely different (and maybe longer) route. For example, a user trying to travel from Chicago to Albuquerque might see that there are many different construction sites along Route 55 between Chicago and Saint Louis. This user could decide to go west instead and then cut down to Albuquerque through Kansas instead of taking the shorter route through Saint Louis and Missouri.

Figure 1 shows a block diagram of a representative system where an information provider (1) receives road constructing information from direct observations (2), federal and state agencies (3) and driver reports (4). Update to

vehicle on-board equipment can be made by a wireless interface (5) or a CD-ROM (6) or like device.

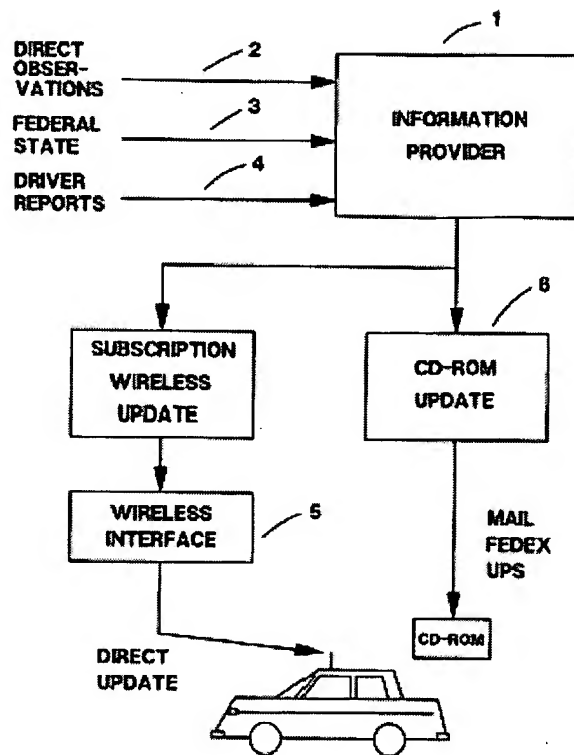


FIGURE 1

Figure 2 shows a simulated map with road construction information shown and an alternate route suggested.

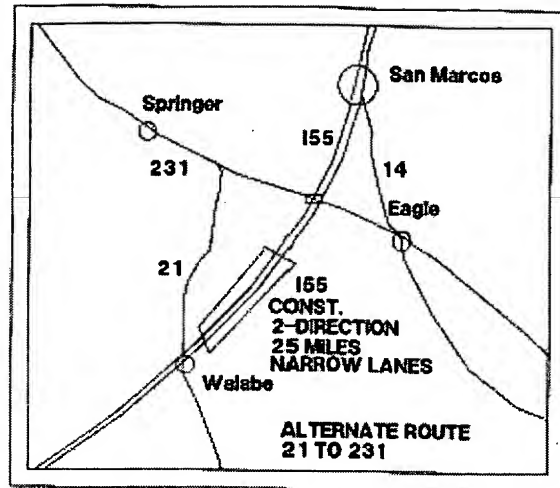


FIGURE 2

B. Mapping of the Independent Claims to the Specification - Associated Structure for Means plus Function Elements

The independent claims are 9, 17 and 21. References to the pages, paragraphs and lines in the specification refer to the specification document as filed on Sept. 29, 2003. Claim 9 contains a means plus function element.

Independent Claims

Claim 9. A system for providing road construction information to vehicle on-board telematics systems (**Abstract**) comprising:

least one telemetric system in a vehicle (**p. 1, line 17 - p. 2, , lines 1-5**), said telemetric system displaying map information (**p. 2, line 4**);

a central information gathering location (**Fig. 1, ref. 1**) for gathering road construction information for vehicle routes (**Fig. 1, refs. 1, 2, 3**), said road construction information being at least partially supplied by a government agency (**Fig. 1, ref. 3**);

a means (**Fig. 1, refs. 3, 6**) for providing said road construction information to said telematics system from said central location, wherein said telematics system displays (**Fig. 2, p. 3, line 18**) said road construction information and map information (**Fig. 2**).

*Means plus function:*

*function: providing road construction information to said telematics system from said central location.*

*Structure: Fig. 1, ref. 5 (wireless interface), Fig. 1, ref. 6 (CD Rom), p. 6, lines 16-22 and p. 7. lines 1-3 (automatic telephone call) (broadcast).*

Claim 17. A method of providing for wide area trip planning with a telematics system located in a vehicle (**Abstract**) comprising the steps of:

receiving road construction information from at least one governmental agency for a plurality of routes (**Fig. 1, ref. 3**);

transmitting said road construction information system to said telematics system (**Fig. 1, refs. 5, 6; p. 6, lines 16-22, p. 7, lines 1- 3**);



causing said road construction information to be displayed (**Fig. 2, p. 3, line 18**) in a vehicle and causing map (**Fig. 2**) information to be displayed in the vehicle wherein said construction information includes number of lanes affected (**p. 4, line 2**) and times when said lanes are affected by said construction (**p. 4, lines 2-3**).

Claim 21. A system for long distance trip planning (**Abstract**) comprising a computer (**p. 3, lines 8-11**), a storage device (**p. 3, line 22; p. 8, lines 10-13**), and a communications sub-system (**Fig. 1, refs. 5, 6**) wherein said computer receives reports of road construction sites through said communications sub-system (**Fig. 1, ref. direct update**) and stores said reports in said storage device (**p.8, line 18**), said computer then displaying map information and construction information (**Fig. 2**).

### C. History of the Prosecution

A provisional application was filed Sept. 30, 2002. The utility application was filed Sept. 29, 2003. A restriction requirement was issued, and an election made Nov. 23, 2004. A first office action was received Dec. 1, 2004. A response was filed March 1, 2005. A notice of allowance was received May 16, 2005. The issue fee was paid Aug. 12, 2005. A notice of withdrawal of the allowance and non-final office action was received Aug. 19, 2005. A response was filed Nov. 9, 2005. A second non-final office action was received Jan. 17, 2006. A response was filed April 10, 2006. A telephone interview was held with the examiner on

April 6, 2006. A final office action was received June 21, 2006. A notice of this appeal was filed Sept. 18, 2006. The examiner re-opened prosecution in an amendment issued March 7, 2007 rejecting the claims as obvious over only one of the previous references (Bruce et al.). The applicant filed a second notice of appeal on June 7, 2007 along with a request for a pre-appeal brief conference which was denied. The applicant filed an appeal brief on Aug. 7, 2007 and an augmented brief on Dec. 14, 2007. On Oct. 24, 2008, the examiner re-opened prosecution and issued a non-final office action citing new references. The applicant, rather than respond to the examiners office action, re-filed a notice of appeal on Jan. 21, 2009. This brief is being timely submitted with respect to that notice of appeal.

#### **VI. Grounds of Rejection to be Reviewed on Appeal**

1) Claims 9-12, 15 and 16 stand rejected under 35 U.S.C. §102(e) as being anticipated by Witkowski et al. (U.S. 7,257,426 – “Witkowski”).

2) Claims 21-23 stand rejected under 35 U.S.C. §102(e) as being anticipated by Cox et al. (U.S. 6,580,904 – “Cox”).

3) Claims 13, 14 and 17-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Witkowski in view of Ran et al. (U.S. 6,209,026 – “Ran”).

#### **VII. Argument**

1) Claims 9-12, 15 and 16 are not anticipated by Witkowski.

Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference or embodied in a single prior art

device or practice. In re Paulson, 30 F.3d 1475, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). The corollary of the rule is that absence from the reference of any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 230 USPQ2d 81 (Fed. Cir. 1986). To anticipate a patent claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. Atlas Powder Co. v. IRECO Inc., 190 F.3d 1342, 51 USPQ2d 1943 (Fed. Cir. 1999). The reference must describe the applicant's claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it. See, In re Spada at 708.

Witkowski does not anticipate because, while it teaches supplying road construction information, it does not teach “said road construction information being at least partially supplied by a government agency.” The words “government” and “agency” do not appear in Witkowski and there is no similar disclosure anywhere.

The examiner states that Witkowski teaches GPS information is supplied and that the GPS system was installed and is maintained by the government. However, the examiner overlooks two facts: 1) The GPS data does not contain anything about road construction, only navigation, and 2) GPS is not “supplied”; rather it comprises satellite timing code signals are freely broadcast by a plurality of satellites. The GPS receiver in the vehicle decodes these to compute longitude and latitude using multiple satellites. This has nothing to do with road construction data.

<u>Claim Limitation</u>	<u>Witkowski et al.</u>
<b>Claim 9:</b>  At least one telemetric system displaying map information.	Yes
A central information gathering location gathering road construction information for vehicle routes, <u>the road information being at least partially supplied by a government agency;</u>	No  <b>Does not teach road construction information being supplied by a government agency</b>
means for providing road construction information to said telemetric system.	Yes

Table 1

The examiner has missed the point that the claim requires a government agency to partially supply information as to the location of road construction, not navigation signals.

Since the independent claim (claim 9) is not anticipated, it is impossible as a matter of law for the dependent claims to be anticipated.

Claim 10 adds wireless communications – taught by Witkowski.

**Claim 11** adds displaying road construction information on a map – Not taught by Wiskowski.

**Claim 12** adds a local area network – taught by Witkowski. However, independent claim not anticipated.

**Claim 15** adds charging a fee for road construction information. – Not taught by Wiskowski. Witkowski teaches charging a fee for general information, but does not explicitly teach charging for road construction information.

**Claim 16** depends on claim 15 and makes the fee periodic. – Not taught by Wiskowski. Witkowski teaches a subscription service for general information but does not disclose a subscription service for road construction information.

2) Claims 21-23 are not anticipated by Cox.

The Cox reference teaches a directory assistance service that can supply travel directions to a telephone or PDA. However Cox fails to teach that road construction information be displayed. In addition, Cox fails to teach anything about displaying maps – the word “map” does not appear in Cox.

<u>Claim Limitation</u>	<u>Cox et al.</u>
<b>Claim 21.</b> A system for long distance trip planning comprising a computer, a storage device, a communication sub-system	Yes
where the computer receives reports of road constructions sites	Yes
communication system	Yes
stores reports in storage device	Yes

displays map information and construction information	<p>No</p> <p><b>Cox does not teach displaying map information or construction information.</b></p>
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Because the independent claim is not anticipated, it is impossible as a matter of law to anticipate the dependent claim.

**Claim 22** mounts the computer on a vehicle – Not taught by Cox.

**Claim 23** allows the communications system to be a cellular telephone – Cox teaches this; however, the independent claim is not anticipated.

3) Claims 13-14, 17-20 are not rendered obvious by the combination of Witkowski and Ran.

The examiner has the burden under 35 U.S.C. §103(a) to establish a *prima facie* case of obviousness. In re Thrift, 298 F.3d 1357, 1363, 63 U.S.P.Q.2d 2002, 2006 (Fed. Cir. 2002). In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. In re Brouwer, 77 F.3d 422, 425, 37 U.S.P.Q.2d 1663, 1666 (Fed. Cir. 1996) ("when the references cited by the examiner fail to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned"). To establish a *prima facie* case of obviousness, the examiner must show some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art that would

lead that individual to combine the relevant teachings of the references. In re File, 837 F.2d 1071, 1074; 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). The prior art references relied upon, when combined, must teach or suggest all the claim limitations of the invention. In re Royka, 490 F.2d 981, 984, 180 U.S.P.Q. 580, 582 (CCPA 1974). In addition to the requirement that each and every claim limitation be taught by the prior art, there must be some reason, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. See KSR case recently decided by the U.S. Supreme Court. Furthermore, the reason to make the claimed combination must be found in the prior art, not in the applicant's disclosure. In re Vaeck, 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). To prevent the use of hindsight based on the invention to defeat patentability of the invention, the examiner is required to show a reason to combine. M.P.E.P and KSR case recently decided by the United States Supreme Court. If an independent claim is found to be nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is also nonobvious. In re Fine, 837 F.2d 1071, 1076, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

The examiner fails to make out a *prima facie* case of obviousness because neither Witkowski nor Ran teach receiving road construction information from a governmental agency as required by dependent claims 13, 14, independent claim 17, and dependent claims 18-20.

The examiner apparently attempts to carry his argument over that GPS is supplied by a governmental agency; however, he fails since, as previously

stated, GPS does not supply any information about road construction whatsoever.

The Ran reference teaches providing road construction information including lane closures on a webpage over the internet; however, Ran does not teach that the information came from a governmental agency, nor does Ran teach displaying road construction information on a map or in a vehicle.

Since neither reference discloses or suggests all of the claim limitations, and because these limitations are not simply a case of trying known alternatives, there is no *prima facie* case of obviousness.

**Claim 13** adds information concerning affected lanes (to claim 9) – Ran teaches this. However Ran and Witkowski do not teach or suggest receiving the information from a government source and displaying it with map information.

**Claim 14** adds construction work times (to claim 9) – Ran teaches this. However Ran and Witkowski do not teach or suggest receiving the information from a government source and displaying it with map information.

**Claim 17** is an independent claim. As discussed, there is no *prima facie* case of obviousness for claim 17.

**Claim 18** adds start and stop work times (to claim 17) - Ran teaches this. However Ran and Witkowski do not teach or suggest receiving the information from a government source and displaying it with map information.


**Claim 19** adds transmitting information by cellular telephone. – Witkowski teaches this. However Ran and Witkowski do not teach or suggest receiving the information from a government source and displaying it with map information.



**Claim 20** adds the telemetrics system in the vehicle presenting road construction information in text form. – Witkowski does not teach displaying anything about road construction, and Ran, while displaying things on a webpage, does not teach displaying in a vehicle. Also, Ran and Witkowski do not teach or suggest receiving the information from a government source and displaying it with map information.

The Appellant respectfully submits that the that neither the Witkowski reference nor the Cox reference anticipate the claims, and that these references alone, or in combination with the Ran reference or any of the other cited art, fail to render the claimed invention obvious since there is no prima facie case of obviousness. The applicant respectfully requests the Board to reverse the examiner's rejections.

Respectfully submitted

  
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Clifford H. Kraft (Reg. No. 35,229)  
Attorney of Record

## **APPENDIX I. Claims on appeal**

Claim 9. A system for providing road construction information to vehicle on-board telematics systems comprising:

at least one telemetric system in a vehicle, said telemetric system displaying map information;

a central information gathering location for gathering road construction information for vehicle routes, said road construction information being at least partially supplied by a government agency;

a means for providing said road construction information to said telematics system from said central location, wherein said telematics system displays said road construction information and map information.

Claim 10. The system of claim 9 wherein said means for providing said road construction information to said telematics systems is wireless.

Claim 11. The system of claim 9 wherein said construction information is displayed on said map information.

Claim 12. The system of claim 10 wherein said wireless means is a local area network.

Claim 13. The system of claim 9 wherein said road construction information further contains information on number of lanes affected.

Claim 14. The system of claim 9 wherein said road construction information further contains information on construction work times.

Claim 15. The system of claim 9 wherein a fee is charged for said road construction information.

Claim 16. The system of claim 15 wherein said fee is a periodic subscription fee.

Claim 17. A method of providing for wide area trip planning with a telematics system located in a vehicle comprising the steps of:

receiving road construction information from at least one governmental agency for a plurality of routes;

transmitting said road construction information system to said telematics system;

causing said road construction information to be displayed in a vehicle and causing map information to be displayed in the vehicle wherein said

construction information includes number of lanes affected and times when said lanes are affected by said construction.

Claim 18. The method of claim 17 wherein said times include work start and stop times.

Claim 19. The method of claim 17 wherein the step of transmitting is by cellular telephone.

Claim 20. The method of claim 17 further comprising said telemetrics system presenting information relating to said road construction in text form.

Claim 21. A system for long distance trip planning comprising a computer, a storage device, and a communications sub-system wherein said computer receives reports of road construction sites through said communications sub-system and stores said reports in said storage device, said computer then displaying map information and construction information.

Claim 22. The system of claim 21 wherein said computer is mounted in a vehicle.

Claim 23. The system of claim 21 wherein said communications sub-system includes cellular telephone.

## **APPENDIX II. Evidence Appendix**

NONE

### **Appendix III. Related Proceedings Appendix**

NONE